

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No. 1:01-CR-00005
	:	
v.	:	(Judge Rambo)
	:	
JOSEPH BURNETT	:	(Electronically Filed)

MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)

AND NOW comes Joseph Burnett, by his attorney, Thomas A. Thornton, of the Federal Public Defenders Office, and files this Motion for Relief Under 18 U.S.C. § 3582(c). In support thereof, it is averred as follows:

1. On January 3, 2001, a Grand Jury sitting in the Middle District of Pennsylvania returned a three count Indictment charging Joseph Burnett with drug trafficking and carrying a firearm in relation thereto. Specifically the distribution and possession with the intent to distribute cocaine base a/k/a “crack” in violation of 21 U.S.C. § 841 (a)(1) and 18 U.S.C. § 924(c).

2. Joseph Burnett appeared before this Honorable Court on March 12, 2001 and entered a plea of guilty to Count One and Three of the Indictment charging the

same offense of distribution and possession with the intent to distribute cocaine base and possession of a firearm in furtherance of drug trafficking.

3. The Court ordered the preparation of a presentence report.

4. The 2000 edition of the United States Sentencing Guidelines Manual was used to calculate Joseph Burnett's sentencing guideline range.

5. The presentence report provides that Joseph Burnett was accountable for between 1 and 2 grams of cocaine base.

6. The presentence report listed the base offense level for the crack cocaine as 18. The offense level reduced by three levels for acceptance of responsibility. This resulted in a final offense level of 15.

7. Joseph Burnett was assigned a criminal history category of IV.

8. Joseph Burnett's sentencing guideline range was 30 - 37 months.

9. After awarding credit for acceptance of responsibility, the court adopted the findings of the presentence report.

10. On August 29, 2001, this Honorable Court sentenced Joseph Burnett to a term of imprisonment of 97 months this represented 37 months for the crack cocaine and a 60 month consecutive mandatory for 18 U.S.C. §924 (c).

11. Joseph Burnett is serving this sentence at Dauphin County Prison.

12. On November 1, 2007, the United States Sentencing Commission amended the Drug Quantity Table and reduced the offense level for an offense involving at least 1 gram but less than 2 grams of cocaine base by 2 levels to a level 16. (Amendment 706).

13. On December 12, 2007, the United States Sentencing Commission announced its decision to apply the amendments to the crack guidelines retroactively effective March 3, 2008 and listed Amendment 706 in the new U.S.S.G. § 1B1.10 (c).

14. Pursuant to 18 U.S.C. § 3582(c)(2), “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable,”

15. Under the retroactive application of the amendment to the sentencing guidelines, Joseph Burnett’s total offense level is 16 and with a 3 level reduction for acceptance of responsibility, the final offense level is 13.

16. An offense level of 13 and a criminal history category of IV results in a now advisory guideline imprisonment range of 24 to 30 months.

17. The previous sentence was at the top of the guideline range. A similar sentence under the new guidelines would yield 30 months.

18. Because Joseph Burnett had been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing

Commission, he moves this Honorable Court to reduce the term of imprisonment in accordance with 18 U.S.C. § 3582(c)(2).

19. Defense counsel has communicated with Acting United States Attorney Martin C. Carlson who indicated that he would be filing a separate response .

WHEREFORE, it is respectfully requested that this Honorable Court grant the foregoing Motion for Relief Under 18 U.S.C. § 3582(c).

Respectfully submitted,

Date: April 15, 2008

/s/ Thomas A. Thornton

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CERTIFICATE OF SERVICE

I, Thomas A. Thornton, Federal Public Defender for the Middle District of Pennsylvania, do hereby certify that I served a copy of the foregoing **MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)(2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

Martin C. Carlson, Esquire

[REDACTED]
[REDACTED]
[REDACTED]

Bruce Brandler, Esquire

[REDACTED]
[REDACTED]
[REDACTED]

Drew Thompson

[REDACTED]
[REDACTED]
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Joseph Burnett

[REDACTED]
[REDACTED]
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Date: April 15, 2008

/s/ Thomas A. Thornton

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